

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

08-CR-6020L

v.

KELVIN MITCHELL,

Defendant.

This Court referred all pretrial motions in this criminal case to United States Magistrate Judge Jonathan W. Feldman pursuant to 28 U.S.C. § 636(b). Counsel for defendant, Kelvin Mitchell (“Mitchell”), filed several separate motions as part of his omnibus motion which included a motion to suppress evidence obtained on the basis of five separate eavesdropping warrants and a search warrant.

Magistrate Judge Feldman issued a thorough Report and Recommendation (Dkt. #118) recommending that the defendant’s motion to suppress evidence be denied. Mitchell timely filed Objections (Dkt. #119) to that Report and Recommendation. The objections are limited and only challenge Magistrate Judge Feldman’s recommendation concerning the eavesdropping and search warrants relating to Mitchell’s residence, 2103 Beech Grove Drive, Greensboro, North Carolina.

The eavesdropping warrant at issue was issued by a Monroe County Court Judge, and the search warrant in North Carolina was issued by a United States Magistrate Judge from the Middle District of North Carolina.

Mitchell contends that the application for the eavesdropping warrant was defective since it failed to clearly demonstrate that other investigative techniques had been exhausted. He also objects to the search warrant at the Beech Grove Drive address because, in his view, that the application failed to establish probable cause that drug related evidence would be found there.

In considering defendant's objections, I have reviewed the Magistrate Judge's Report and Recommendation, the papers submitted on the motion, including the original materials and affidavits submitted to the issuing judges. In addition, the tape of the oral argument in this court has been made available for my review. After considering all these matters, I see no reason to modify or alter Magistrate Judge Feldman's recommendation and, therefore, I adopt his Report and Recommendation and deny defendant's motions to suppress.


Concerning issuance of the eavesdropping warrant, the Magistrate Judge carefully summarized the law, including recent authority on the issue, and the facts relative to this particular case. I agree with Magistrate Judge Feldman that the application sufficiently indicated that normal investigative techniques had been attempted but that because of the large-scale narcotics trafficking operation, such an enterprise could not adequately be investigated by the traditional methods. Viewing such applications in a common sense fashion certainly supports obtaining eavesdropping warrants, and I find no basis to suppress the evidence seized from those warrants.

Similarly, I find that there was sufficient probable cause for issuance of the search warrant at Mitchell's residence in Greensboro, North Carolina. Based on the affidavit, I agree with Magistrate Judge Feldman that there was probable cause to believe that one involved in such a narcotics conspiracy would possess drug related items or matters of evidence at the residence. In addition, I agree with Magistrate Judge Feldman that there is no reason not to apply *United States v. Leon*, 468 U.S. 897, 923 (1984). There is no reason to conclude that the officers did anything other than rely on the warrant with objective good faith. Therefore, there is no basis to suppress.

CONCLUSION

I accept and adopt the Report and Recommendation of United States Magistrate Judge Jonathan W. Feldman (Dkt. #118). I, therefore, deny defendant's motion to suppress evidence(Dkt. #94) obtained from eavesdropping warrants concerning defendant Kelvin Mitchell and the search warrant for the address at 2103 Beech Grove Drive, Greensboro, North Carolina.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
January 5, 2010.